

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM LAMARTINA, Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiff,)

vs.)

VMWARE, INC., et al.,)

Defendants.)

Case No. 5:20-cv-02182-EJD (VKD)

CLASS ACTION

~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

1 WHEREAS, an action is pending before this Court titled *Lamartina v. VMware, Inc., et*
2 *al.*, No. 5:20-cv-02182-EJD (N.D. Cal.) (the “Action”);

3 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil
4 Procedure 23(e), for an order preliminarily approving the settlement of this Action, in accordance
5 with a Stipulation of Settlement dated October 4, 2024 (the “Stipulation”), which, together with
6 the Exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the
7 Action and for dismissal of the Action with prejudice upon the terms and conditions set forth
8 therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto;
9 and

10 WHEREAS, unless otherwise defined, all capitalized terms used herein have the same
11 meanings as set forth in the Stipulation.

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

13 1. After a preliminary review, the Settlement appears to be fair, reasonable, and
14 adequate. The Settlement: (i) resulted from arm’s-length negotiations overseen by an experienced
15 mediator; (ii) eliminates the risks to the Settling Parties of continued litigation; (iii) does not
16 provide undue preferential treatment to Lead Plaintiff or to segments of the Class¹; (iv) does not
17 provide excessive compensation to counsel for the Class; and (v) appears to fall within the range
18 of possible approval and is therefore sufficiently fair, reasonable, and adequate to warrant
19 providing notice of the Settlement to the Class. Accordingly, the Court hereby preliminarily
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22 ¹ The “Class” is defined as all persons who purchased the publicly traded Class A common stock
23 of VMware during the period from August 24, 2018 through February 27, 2020, inclusive (the
24 “Class Period”), and were damaged thereby. Excluded from the Class are Individual Defendants
25 and their immediate family members. Also excluded from the Class are any persons or entities
26 who exclude themselves by submitting a request for exclusion in connection with the Notice that
27 is accepted by the Court.
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1 approves the Stipulation and the Settlement set forth therein, subject to further consideration at the
2 Settlement Hearing described below.

3 2. A hearing (the “Settlement Hearing”) shall be held before this Court on March 31,
4 2025, at 9:00 a.m., at the United States District Court for the Northern District of California,
5 Courtroom 4 – 5th Floor, 280 South 1st Street, San Jose, CA 95113, for the following purposes:

6 (a) to determine whether the Settlement is fair, reasonable, and adequate, and
7 should be approved by the Court;

8 (b) to finally determine whether Judgment as provided under the Stipulation
9 should be entered, dismissing the Action on the merits and with prejudice, and to determine
10 whether the release by the Class of the Released Defendants Parties as set forth in the Stipulation,
11 should be ordered, along with a permanent injunction barring efforts to bring any Released Claims
12 or Released Defendants’ Claims extinguished by the Settlement;

13 (c) to finally determine whether the proposed Plan of Allocation for the
14 distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

15 (d) to consider the application of Lead Counsel for an award of attorneys’ fees
16 and expenses and an award to Lead Plaintiff;

17 (e) to consider Class Members’ objections to the Settlement, Plan of
18 Allocation, or application for fees and expenses; and

19 (f) to rule upon such other matters as the Court may deem appropriate.

20 3. The Court may adjourn the Settlement Hearing without further notice to the
21 members of the Class, and reserves the right to approve the Settlement with such modifications as
22 may be agreed upon or consented to by the Settling Parties and without further notice to the Class
23 where to do so would not impair Class Members’ rights in a manner inconsistent with Rule 23 of
24 the Federal Rules of Civil Procedure and due process of law. The Court further reserves the right
25 to enter its Judgment approving the Settlement and dismissing the Action, on the merits and with
26 prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys’ fees
27 and expenses.

1 4. The Court approves, as to form and content, the Notice of Pendency and Proposed
2 Settlement of Class Action (the “Notice”), the Proof of Claim and Release Form (the “Proof of
3 Claim”), the Summary Notice, and the Postcard Notice, annexed hereto as Exhibits A-1, A-2, A-
4 3, and A-4, respectively, and finds that the distribution of the Postcard Notice by email or regular
5 mail (where an email is unavailable) and publishing of the Summary Notice, substantially in the
6 manner and form set forth in ¶¶7-8 of this Order, meet the requirements of Rule 23 of the Federal
7 Rules of Civil Procedure and due process, and is the best notice practicable under the
8 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

9 5. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to
10 supervise and administer the notice procedure as well as the processing of claims as more fully set
11 forth below.

12 6. Within seven (7) calendar days after the Court enters this Order, VMware shall use
13 reasonable best efforts to: (i) locate record shareholder lists of VMware shareholders during the
14 Class Period to the extent such lists exist; (ii) identify and provide contact information for
15 VMware’s transfer agent(s) during the Class Period; and (iii) shall facilitate access to such
16 information for Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiff of the Class,
17 for purposes of providing notice of the proposed Settlement to the Class. The Settling Parties shall
18 determine an appropriate electronic format for provision of this information.

19 7. Lead Counsel, through the Claims Administrator, shall commence emailing or
20 mailing (where an email is unavailable) the Postcard Notice, substantially in the form annexed
21 hereto, within twenty (20) calendar days after the Court signs this Order (the “Notice Date”), by
22 email or by first-class mail to all Class Members who can be identified with reasonable effort.
23 Contemporaneously with the emailing or mailing of the Postcard Notice, the Claims Administrator
24 shall cause the Notice and Proof of Claim, substantially in the forms attached hereto, to be posted
25 on the Settlement website at www.VMwareSecuritiesLitigation.com, from which copies of the
26 documents can be downloaded.

1 8. Not later than seven (7) calendar days after the Notice Date, the Claims
2 Administrator shall cause the Summary Notice to be published once in the national edition of *The*
3 *Wall Street Journal* and once over a national newswire service.

4 9. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall
5 serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such
6 emailing, mailing, and publishing.

7 10. Nominees who purchased VMware Class A common stock for the beneficial
8 ownership of Class Members during the Class Period shall: (i) within seven (7) calendar days of
9 receipt of the Postcard Notice request from the Claims Administrator sufficient copies of the
10 Postcard Notice to forward to all such beneficial owners and within seven (7) calendar days of
11 receipt of those documents forward them to all such beneficial owners; or (ii) within seven (7)
12 calendar days of receipt of the Postcard Notice, send a list of the names and addresses, including
13 email addresses where available, of all such beneficial owners to the Claims Administrator in
14 which event the Claims Administrator shall promptly email or mail (where an email is unavailable)
15 the Postcard Notice to such beneficial owners. Lead Counsel shall, if requested, reimburse banks,
16 brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred
17 in providing notice to beneficial owners who are Class Members out of the Settlement Fund, which
18 expenses would not have been incurred except for the sending of such notice, as set forth in the
19 Notice, subject to further order of this Court with respect to any dispute concerning such
20 compensation.

21 11. In order to be entitled to participate in the recovery from the Settlement Fund after
22 the Effective Date, each Class Member shall take the following action and be subject to the
23 following conditions:

24 (a) A properly completed and executed Proof of Claim must be submitted to
25 the Claims Administrator, at the post office box or electronic mailbox indicated in the Notice and
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1 Proof of Claim, received² no later than ninety (90) calendar days from the Notice Date. Such
2 deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to
3 have been submitted when received (if properly addressed and mailed by first-class mail). Any
4 Proof of Claim submitted in any other manner shall be deemed to have been submitted when it
5 was actually received by the Claims Administrator at the address designated in the Notice.

6 (b) The Proof of Claim submitted by each Class Member must satisfy the
7 following conditions: (i) it must be properly filled out, signed, and submitted in a timely manner
8 in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by
9 adequate supporting documentation for the transactions reported therein, in the form of broker
10 confirmation slips, broker account statements, an authorized statement from the broker containing
11 the transactional information found in a broker confirmation slip, or such other documentation as
12 is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the
13 Proof of Claim is acting in a representative capacity, a certification of their, his, or her current
14 authority to act on behalf of the Class Member must be provided with the Proof of Claim; and (iv)
15 the Proof of Claim must be complete and contain no material deletions or modifications of any of
16 the printed matter contained therein and must be signed under penalty of perjury.

17 (c) Once the Claims Administrator has considered a timely submitted Proof of
18 Claim, it shall determine whether such claim is valid, deficient, or rejected. For each claim
19 determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter
20 or rejection letter as appropriate, describing the basis on which the claim was so determined.
21 Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded
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24 ² Claims, objections, requests for exclusion, and other correspondence that are legibly
25 postmarked will be treated as received on the postmark date. The documents providing notice
26 shall advise Class Members that the U.S. Postal Service may not postmark mail which is not
27 presented in person.
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1 a reasonable time (at least twenty (20) calendar days) to cure such deficiency if it shall appear that
 2 such deficiency may be cured.

3 (d) For the filing of and all determinations concerning their Proof of Claim,
 4 each Class Member shall submit to the jurisdiction of the Court.

5 12. Any Class Member who does not timely submit a valid and timely Proof of Claim
 6 within the time provided for shall be barred from sharing in the distribution of the proceeds of the
 7 Settlement Fund, but will in all other respects be subject to and bound by the provisions of the
 8 Stipulation and the Judgment, if entered. Notwithstanding the foregoing, Lead Counsel shall have
 9 the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims
 10 Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not
 11 materially delayed thereby, but will bear no liability for failing to accept such late-claims.

12 13. Any member of the Class may enter an appearance in the Action, individually or
 13 through counsel of their own choice, at their own expense. If they do not enter an appearance,
 14 they will be represented by Lead Counsel.

15 14. All Class Members shall be bound by all determinations and judgments in this
 16 Action, whether favorable or unfavorable, unless such persons request to be excluded, or “opt out,”
 17 from the Class. Any Class Members who wish to exclude themselves from the Class must request
 18 exclusion in writing within the time and in the manner set forth in the Notice. Any such Person
 19 must submit to the Claims Administrator a signed request for exclusion (“Request for Exclusion”)
 20 such that it is received³ no later than March 10, 2025 (a date that is twenty-one (21) calendar days
 21 prior to the Settlement Hearing). A Request for Exclusion must provide: (i) the name, address,
 22 and telephone number of the Person requesting exclusion; (ii) a list identifying the number of
 23 shares of VMware Class A common stock purchased during the Class Period and the date of each
 24 purchase; and (iii) a statement that the Person wishes to be excluded from the Class. All Persons
 25 who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall
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27 ³ See n.2, above.

1 have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund,
2 and shall not be bound by the Settlement or any Final Judgment. Unless otherwise ordered by the
3 Court, any Person who purchased VMware Class A common stock during the Class Period, and
4 who fails to timely request exclusion from the Class in compliance with this paragraph shall be
5 deemed to have waived their, his, her, or its right to be excluded from the Class and shall be barred
6 from requesting exclusion from the Class.

7 15. The Court will consider comments or objections to the Settlement, the Plan of
8 Allocation, or Lead Counsel's request for an award of attorneys' fees and expenses, only if such
9 comments or objections and any supporting papers are submitted to the Court either by mailing
10 them to the Clerk of the Court, United States District Court for the Northern District of California,
11 280 South 1st Street, San Jose, CA 95113, or by filing them in person at any location of the United
12 States District Court for the Northern District of California. Such comments or objections must
13 be filed or received⁴ at least twenty-one (21) calendar days prior to the Settlement Hearing, or
14 March 10, 2025. Attendance at the Settlement Hearing is not necessary, but any Person wishing
15 to be heard orally in opposition to the Settlement, the Plan of Allocation, or the application for
16 attorneys' fees and expenses is required to indicate in their written objection whether they intend
17 to appear at the Settlement Hearing. The notice of objection must include documentation
18 establishing the objecting Person's membership in the Class, including the number of shares of
19 VMware Class A common stock that the objecting Person: (i) owned as of the opening of trading
20 on August 24, 2018, and (ii) purchased and/or sold during the Class Period, as well as the dates
21 and prices for each such purchase or sale, and contain a statement of reasons for the objection,
22 including whether it applies only to the objector, to a specific subset of the Class, or to the entire
23 Class. The objection must identify all other class action settlements the objector and his, her, or
24 its counsel has previously objected to, copies of any papers, briefs, or other documents upon which
25 the objection is based, and contain the objector's signature, even if represented by counsel. Any

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27 ⁴ See n.2, above.

1 member of the Class who does not make his, her, or its objection in the manner provided shall be
2 deemed to have waived such objection and shall forever be foreclosed from making any objection
3 to the fairness or adequacy of the Settlement as set forth in the Stipulation, to the Plan of
4 Allocation, or to the award of attorneys' fees and expenses to Lead Counsel unless otherwise
5 ordered by the Court. Class Members do not need to appear at the Settlement Hearing or take any
6 other action to indicate their approval.

7 16. All funds held by the Escrow Agent shall be deemed and considered to be in
8 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time
9 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

10 17. All opening briefs and supporting documents in support of the Settlement, the Plan
11 of Allocation, and any application by Lead Counsel for attorneys' fees and expenses and an award
12 to Lead Plaintiff shall be filed and served no later than thirty-five (35) calendar days before the
13 Settlement Hearing, or February 24, 2025. Replies to any objections shall be filed and served at
14 least seven (7) calendar days prior to the Settlement Hearing, or March 24, 2025.

15 18. The Released Defendants Parties shall have no responsibility, interest in, or liability
16 whatsoever for the Plan of Allocation or any application for attorneys' fees or expenses submitted
17 by Lead Counsel, and such matters will be considered separately from the fairness, reasonableness,
18 and adequacy of the Settlement. Any order or proceeding relating to the Plan of Allocation or any
19 application for attorneys' fees or expenses, or any appeal from any order relating thereto or reversal
20 or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay
21 the finality of the Judgment approving the Stipulation and the settlement of the Action.

22 19. At or after the Settlement Hearing, the Court shall determine whether the Plan of
23 Allocation proposed by Lead Counsel, and any application for attorneys' fees or payment of
24 expenses, including an award to Lead Plaintiff shall be approved.

25 20. All reasonable expenses incurred in identifying and notifying Class Members, as
26 well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.

27 21. Neither the Stipulation, nor any of its terms or provisions, nor any of the
28 negotiations or proceedings connected with it, shall be construed as an admission or concession

1 by the Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or
2 wrongdoing of any kind.

3 22. If the Stipulation and the Settlement set forth therein is not approved or
4 consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had
5 in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo*
6 *ante* as set forth in the Stipulation.

7 23. Pending final determination of whether the proposed Settlement should be
8 approved, neither the Lead Plaintiff, nor any Class Member, directly or indirectly, representatively,
9 or in any other capacity, shall institute, commence, or prosecute against any of the Released
10 Defendants Parties, any action or proceeding in any court, tribunal, or other forum asserting any
11 of the Released Claims.

12 24. The Court's orders entered during this Action relating to the confidentiality of
13 information shall survive this Settlement.

14 IT IS SO ORDERED.

15 DATED: November 26, 2024



THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE